

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: Case No. 20-33239
Chapter 11
(Jointly Administered)
CHESAPEAKE EXPLORATION, L.L.C.,
515 Rusk Avenue
Houston, TX 77002
Debtor. Thursday, August 31, 2023
1:46 p.m.

TRANSCRIPT OF MOTION REORGANIZED DEBTORS' MOTION FOR ENTRY OF
AN ORDER (I) ENFORCING THE CONFIRMATION ORDER AND PLAN AGAINST
THE REORGANIZED DEBTORS AND (II) DECLARING THE MEC SETTLEMENT
AND NON-MEC SETTLEMENT NULL AND VOID FILED BY DEBTOR
CHESAPEAKE EXPLORATION, L.L.C. [322]
BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY COURT JUDGE

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Also Present:

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RYAN VAN ESLER



1 (Proceedings commence at 1:46 p.m.)

2 THE COURT: All right. Thank you, and officially
3 good afternoon, everyone. This is Judge Jones. The time is
4 1:46 Central. Today is August the 31st, 2023. This is the
5 docket for Houston, Texas. Also on the 1:30 docket, we have
6 the jointly-administered cases under Case Number 20-33239,
7 Chesapeake Exploration, L.L.C.

8 Folks, again, please don't forget to record your
9 electronic appearance. It's a quick trip to the website, a
10 couple of mouse clicks. You can do that at any time prior to
11 the conclusion of the hearing. It is the way that we note your
12 official appearance.

13 First time that you speak, if you would, please make
14 sure you state your name and who you represent. Really does
15 help the court reporter in the event that a transcript request
16 is made.

17 Finally, we are recording this afternoon using
18 CourtSpeak. The audio will be up on the docket shortly after
19 the conclusion of the hearing.

20 I did see one party who hit "five star." I have
21 activated the hand-raising feature. I think I've got somebody
22 on the line that has enjoyed spending the day riding around in
23 their, evidently, convertible, because it's just been windy
24 noise all day long. I don't know where it's from, but I don't
25 want you to suffer through that. So, if you know you're going



1 to be speaking, "five star" on your phone. You can change your
2 mind at any time.

3 And with that, Mr. Donovan, good afternoon.

4 MR. D. DONOVAN: Good afternoon, Judge. Can you hear
5 me okay?

6 THE COURT: Loud and clear. Thank you for checking.

7 MR. D. DONOVAN: Great. Good afternoon. And good
8 afternoon to counsel we've dealt with for some time.

9 So, Judge, we're here on behalf of Chesapeake seeking
10 two forms of relief: First, our motion seeks an order
11 requiring counsel to dismiss pre-effective date claims from
12 five cases. Okay? And I'll have some slides in a moment.
13 But, counsel in one of those cases, the Tyler case has already
14 stipulated to that relief. And just before this hearing, we
15 agreed to an order that's going to get filed in the Middle
16 District in that case.

17 Two of the cases, the MEC and the non-MEC, say in the
18 briefing, and I take them at their word, that they're not going
19 to pursue pre-effective date claims, but they haven't dismissed
20 those cases or claims yet, and we believe we're entitled to an
21 order, mostly because I want to make sure if whatever proceeds
22 in front of Judge Mannion in the Middle District is clear, that
23 what is proceeding, what could proceed and what isn't.

24 Two of the cases, the Burkett and A & B Campbell, I
25 did not see a response from them. I don't believe they're



1 going to, but I haven't seen a response, and we believe we're
2 entitled to an order there. So that's relief number one.

3 The second, Judge, we seek an order declaring the MEC
4 and non-MEC settlement agreements with the debtor be declared
5 null and void, and that counsel cannot seek to enforce these
6 agreements with the debtor in another court.

7 Now, the MEC counsel has been straightforward. They
8 said they intend to move in front of the Middle District of
9 Pennsylvania with that agreement. The non-MEC in their
10 briefing suggested, although I'm not entirely clear, that they
11 did not intend to pursue the non-MEC settlement, but the door
12 wasn't closed.

13 We believe, per the terms of the agreement and the
14 Fifth Circuit's decision, these agreements with the debtor are
15 now null and void. And in any event, anything related to
16 agreements with the debtor need to be addressed with this Court
17 is our view. It interplays with both the plan, the
18 confirmation order, and we simply believe that it can't go
19 anywhere else.

20 So, Judge, if I could share my screen a bit to show a
21 few slides.

22 THE COURT: You have control.

23 MR. D. DONOVAN: Thank you.

24 THE COURT: Well, while he's doing that, Mr. Michael
25 Donovan and Mr. Seltz, I see you raising your hand. Everybody



1 will get an opportunity.

2 MR. D. DONOVAN: So, Judge, I want to start with --
3 you've seen this slide before, which is pretty much the three
4 key cases we talked about during the case, starting from the
5 right with the Pennsylvania AG action, which this Court
6 approved and has been implemented, and Chesapeake has since
7 been dismissed.

8 Importantly, as part of that settlement, the royalty
9 owner elections have been implemented. And as Your Honor
10 probably remembers, that going-forward relief was mirrored in
11 the non-MEC and MEC action. The underlying actions, the
12 non-MEC and MEC, are still pending in the Middle District of
13 Pennsylvania, although they are presently stayed, and the judge
14 there has asked for status reports that the parties have filed.

15 These were the five cases I mentioned and kind of
16 just tried to put where I think the issues are. In the MEC
17 case, pending in the Middle District, they agree no
18 pre-effective date claims will proceed, but we believe we need
19 an order on that or entitled to that or at least a stipulation,
20 and that they intend to seek to enforce the MEC settlement in
21 the Middle District.

22 The non-MEC is similar, except they said in their
23 briefing they currently don't intend, or something to that
24 effect, to pursue the non-MEC settlement. They intend to
25 litigate.



1 The Tyler case, we've resolved. Burkett and A & B
2 Campbell, we didn't see a response. We believe, there,
3 there's no settlements, but we're entitled to a ruling on the
4 pre-effective date claims.

5 So, Judge, this is what I said before, and I'm
6 going to address it in this order: first, regarding the
7 pre-effective date claims; and then second, regarding the
8 settlements.

9 So let me start with -- Your Honor may wonder, why do
10 we have a dispute on the pre-effective date claims when, in
11 their briefs, the plaintiffs say they don't intend to pursue
12 it? As I said, you know, the only complaints that are pending
13 in the Middle District relate to pre-effective date conduct.
14 We believe they don't have claims going forward, but that's not
15 for this court. But we believe those cases either need to be
16 dismissed or we need to have those claims very clearly
17 dismissed out of the case. So, to the extent we appear in
18 front of Judge Mannion in the Middle District, it's very clear
19 what's left or what could be left.

20 So these are clips from the operative complaints.
21 And as you can see, they start all the way back, 2010, 2012,
22 and et cetera. I'm not going to repeat this. Your Honor
23 knows, and it's in our brief, but they are claims. They're
24 pre-effective date claims, and the plan discharges them. We
25 believe we're entitled to an order.



1 Going to the second form of relief, this is where the
2 settlement agreements -- so this is just related to the MEC and
3 the non-MEC. These settlement agreements, we were all together
4 before, I know, but they were with the debtors. They are not
5 with any other entities. They're with the debtors that's under
6 the jurisdiction of this Court. They involve the plan and
7 proceeds, as the agreement itself recognized the distribution
8 of the funds pursuant to the Chapter 11 plan. So any attempt
9 to enforce it would be impacting the plan. And not only does
10 the MEC and the non-MEC settlement agreements recognize that,
11 the Fifth Circuit did as well.

12 The plaintiffs on the appeals and the briefing also
13 recognize this. I focus on the second bullet. Look, it
14 relates to the debtor. I don't think there could be any
15 dispute about that. And I show this only to show that the
16 plaintiffs at the time had agreed to this as well.

17 One of the issues in the briefing was one of the
18 terms defined is defined as "court." And it's this court. And
19 that makes sense because any agreement with the debtor, not
20 only under Rule 23, but under bankruptcy law, Your Honor would
21 need to approve it before it could proceed.

22 What I show here is that the agreement doesn't just
23 mention it once. Many, many of the requirements and terms of
24 the settlements relate to approval by this court. And there's
25 other terms too. I'm not going to go through them, but this is



1 one that seemed quite obvious to me.

2 So I come back to where I started. That is, this
3 cannot be enforced. If anything related to this agreement with
4 the debtor is going to be interpreted or otherwise addressed,
5 it needs to be with this court. And with that, I'm happy to
6 answer any questions, Judge. We'll pass the podium.

7 THE COURT: All right. Thank you.

8 Mr. Donovan. No preference on order, but I saw you
9 first. Mr. Michael Donovan. My apologies. Mr. Donovan, I
10 can't hear you. Had you hit "five star" or perhaps -- some
11 people do a double mute just to be careful.

12 Mr. Donovan, I can't hear you. I just want to make
13 sure -- some people hit "star five" mistakenly. It's "five
14 star." Only need to do it once. There you go.

15 MR. M. DONOVAN: Okay.

16 THE COURT: All right.

17 MR. M. DONOVAN: Can you hear me now?

18 THE COURT: Yes, sir. Thank you.

19 MR. M. DONOVAN: Oh, thank you. Well, good
20 afternoon, Your Honor. May it please the Court, I'm here on
21 behalf of the Browns and the non-MEC claims, the non-MEC class.
22 Let me just highlight, Your Honor, that we have three basic
23 points. The first is that the non-MEC claims are not contract
24 or lease language related claims. They are RICO claims with
25 mail fraud predicate acts.



1 There are two other defendants named in the RICO
2 cases brought by the non-MEC claimants. Both of those
3 defendants are non-debtors. One is Access Midstream, now the
4 Williams Companies, and the other is Domenic Dell'Osso, who was
5 the head of Access Midstream during the relative period --
6 relevant period. Both of these are defendants and are non-
7 debtors and are not affected by the discharge.

8 In the non-MEC status report that we filed with the
9 Middle District of Pennsylvania earlier this month, we
10 expressly stated that the non-MEC plaintiffs and the class are
11 not seeking to enforce the settlement agreement that was signed
12 and submitted to Your Honor, and we're not pursuing any damages
13 claims against Chesapeake for pre-bankruptcy gas gathering and
14 transportation charges that were deducted from our loyalties
15 that are covered by this Court's discharge order and
16 injunction.

17 THE COURT: Got it.

18 MR. M. DONOVAN: Instead, we advised the Middle
19 District of Pennsylvania that the litigation that we're
20 pursuing is only against -- for the pre-discharge period would
21 be only against the other two defendants and related -- any
22 related post-bankruptcy inflated revenues that were received by
23 Chesapeake.

24 That post-bankruptcy inflated revenue is not covered
25 by the discharge petition, and I think the Fifth Circuit itself



1 recognized that in its decision.

2 THE COURT: Got it. So, Mr. Donovan, and my
3 apologies for interrupting. Just so we get on the same page,
4 there's a key term -- because you've used a couple of different
5 terms, one of which I didn't even understand. I don't know
6 what a discharge petition is, and I don't think you really
7 meant to say that, but the term --

8 MR. M. DONOVAN: Oh, I didn't mean to say --

9 THE COURT: No, no, no. It's -- the term I want to
10 focus on, to make sure you agree, is the effective date of the
11 plan, because that's the black line. I mean, that's -- before
12 effective date, discharge covers; post-effective date,
13 discharge doesn't touch. I just want to make sure you and I
14 are on the same page.

15 MR. M. DONOVAN: We are on the same page. I should
16 use (audio interference) date.

17 THE COURT: Okay.

18 MR. M. DONOVAN: That's the relevant and that's what
19 the Fifth Circuit used as well.

20 THE COURT: Right.

21 MR. M. DONOVAN: I guess related to the first point,
22 Your Honor, is there really isn't any case or controversy
23 before Your Honor with respect to the non-MEC claims. We're
24 not going to pursue pre-effective date claims against
25 Chesapeake. We have no intention of doing that. We told the



1 Middle District of Pennsylvania that we're not pursuing those
2 claims for damages. And to ask Your Honor to issue an order in
3 this matter is really asking for an advisory opinion that we
4 don't think is proper, given the Fifth Circuit's decision,
5 because it's a non-issue.

6 So we also, given the Fifth Circuit's decision,
7 submit that the Court doesn't have subject matter jurisdiction
8 because the non-MEC plaintiffs have not and are not pursuing
9 any pre-effective date damages claims against Chesapeake, and
10 we're not pursuing enforcement of the settlement agreement that
11 Mr. Donovan, my brother from another mother, referred to.

12 And so -- and then for the third point, Your Honor,
13 whether and to what extent Chesapeake received gas revenues
14 post-effective date that were falsely inflated by the deduction
15 of inflated gas gathering and transportation costs is an issue
16 really for the Middle District of Pennsylvania. Whether that
17 happened and the extent of it is really what would be litigated
18 before that court, if anything. We don't have any discovery on
19 that. We don't know. But we do know that the same structure
20 that we challenged in the RICO allegations continued to exist
21 post-effective date.

22 So that's the distinction there. So we respectfully
23 submit that the Fifth Circuit's mandate directs that this post-
24 effective date conduct is beyond the core and "related to"
25 jurisdiction of the bankruptcy court. And I think the Fifth



1 Circuit said that at the end of its opinion.

2 THE COURT: Yeah. I -- whether they said it or not,
3 I mean, obviously it's important to me if the Circuit says
4 something, but I agree with you, whether they said it or not.
5 Post-effective date, my jurisdiction ends.

6 MR. M. DONOVAN: Yes. So those are our points.

7 Thank you, Your Honor.

8 THE COURT: I got it. All right. Thank you.

9 Mr. Seltz? And, Mr. Seltz, I haven't heard you yet.
10 Had you hit "five star" on your phone? There you are.

11 MR. SELTZ: Okay. Can you -- is that better?

12 THE COURT: Yes, sir. Thank you.

13 MR. SELTZ: Okay. I'm Daniel Seltz from Lief
14 Cabraser Heimann & Bernstein, and I'm here on behalf of the MEC
15 plaintiffs. And I want to apologize, Your Honor. I had some
16 technical difficulties getting onto the audio and was unable to
17 hear the beginning of Dan Donovan's presentation.

18 So I can go ahead and make the points I wanted to
19 make, and I think was able to hear him when he was moving on to
20 the second point. But if I'm going over ground that Your Honor
21 doesn't want to go over again --

22 THE COURT: It's okay. Go ahead.

23 MR. SELTZ: Okay. And I do apologize. We basically
24 have just a couple of key points to make here. The first is
25 that, in our view, the Fifth Circuit couldn't have been



1 clearer. The opening paragraph is that -- of the opinion
2 states that handling these forward-looking cases within the
3 bankruptcy court predicated on 28 U.S.C. Section 1334(a) or (b)
4 rather than in the court where they originated, exceeds federal
5 bankruptcy post-confirmation jurisdiction.

6 In our view, the Court doesn't need to do much more
7 than look at the plain language of that opinion -- there's
8 similar language elsewhere in the opinion -- to find that it
9 lacks jurisdiction to take any action relating to this
10 settlement.

11 The MEC class claims are now solely post-petition
12 claims that are outside of this Court's jurisdiction. The
13 Fifth Circuit held that the settlement doesn't concern the
14 bankruptcy and repeatedly characterized the settlement as
15 forward-looking.

16 What we are proposing to do in the Middle District of
17 Pennsylvania is entirely faithful to the Fifth Circuit's
18 holding, which is to take these claims, which the Fifth Circuit
19 said do not belong here, to the court where they originated,
20 and move forward with an otherwise binding agreement.

21 Now, if the Court does reach the merits of
22 Chesapeake's motion, which is the request to essentially
23 nullify the settlement, it should also deny the relief that
24 Chesapeake is seeking, because, for reasons I can go into, the
25 settlement remains valid and binding on (audio interference).



1 If I could just briefly touch on a couple of the
2 points that Chesapeake made in its reply, I think -- otherwise,
3 I think we covered a lot of this in our response brief. The
4 first was that Chesapeake argues that the parties have agreed
5 that this Court has jurisdiction over the settlement. And
6 while parties can agree to submit a contract to the
7 jurisdiction of a court, a party can't vest the court with
8 jurisdiction where it doesn't independently have it. That's
9 black letter law in this circuit and everywhere else, the
10 jurisdiction can't be conferred by consent or agreement or
11 conduct.

12 The next argument that Chesapeake made, and I think I
13 heard Mr. Donovan again refer to this, is that there's
14 jurisdiction here because the settlements directly concern and
15 affect the distributions of the estate property. Again, that's
16 exactly what the Fifth Circuit said these settlements,
17 including the MEC settlements, do not do. I think this is just
18 an attempt to reargue that there's "related to" jurisdiction,
19 and the Fifth Circuit rejected the idea that there's "related
20 to" jurisdiction in finding that these are forward-looking
21 settlements involving forward-looking conduct. The Fifth
22 Circuit explicitly held that this is a settlement that concerns
23 post-confirmation business.

24 Finally, on jurisdiction, Chesapeake has argued that
25 the Fifth Circuit decision was limited -- decision on



1 jurisdiction is limited to this Court's decision on preliminary
2 approval and the District Court's final approval of the
3 settlement agreement under Rule 23. But the Fifth Circuit
4 opinion doesn't say that. The holding is much broader.

5 Again, as I said, it refers to the -- handling these
6 forward-looking cases here exceeds jurisdiction. It said that
7 it was going to discuss whether the -- this Court had
8 jurisdiction to hear and decide these class claims, and it
9 wouldn't make a lot of sense that this Court could exercise
10 jurisdiction over these claims and over the settlement just for
11 the purposes of interpreting it, let alone to nullify it, but
12 then lack jurisdiction to approve the settlement. Meaning
13 that, as a practical matter, the parties could litigate these
14 claims but not settle them here, because all class claims, you
15 know, require court approval, and that's not what the Fifth
16 Circuit said.

17 So, again, I think that's as far as the Court needs
18 to go. If the Court gets to this -- to Chesapeake's request
19 that the Court declare that (audio interference) to be null and
20 void, I think it should deny that relief first. The idea that
21 the Court can now nullify the settlement because it was
22 premised on approval by the Court, you know, all class
23 settlements require court approval. All class settlements
24 require the supervising court to apply Rule 23, wherever you
25 happen to be.



1 Here, we will just need to go back to the court that
2 the Fifth Circuit indicated was the correct court to seek
3 approval and go through that process. This was an agreement.
4 The MEC agreement was meant to resolve claims that were
5 originally brought and still remain pending in the Middle
6 District.

7 The fact that the settlement defines "court" as this
8 Court, again, shouldn't -- that requires an interpretation by
9 this Court of what's material, which we don't think this Court
10 should be doing. But we cited, you know, numerous cases in our
11 response that explain why the definition of "court" is a
12 severable term under Pennsylvania law and the language of the
13 agreement.

14 This is essentially about venue, which is what's at
15 issue here, and we've provided cases that venue isn't material.
16 Material terms are payment of money and the release, and here,
17 of course, the injunctive provisions which are going to be
18 performed in Pennsylvania. And so I didn't really see an
19 attempt in Chesapeake's reply to argue that -- under
20 Pennsylvania law that -- that who happens to be applying these
21 Rule 23 factors is a material term.

22 We also argued -- we also cited cases that make it
23 clear that class settlements are enforceable pending court
24 approval. The Curiale case from the Eastern District of
25 Pennsylvania has a very fulsome discussion about how the need



1 for court approval doesn't affect the binding nature of the
2 agreement. The Fifth Circuit didn't reach Rule 23 factors, and
3 there's nothing about its holding that would nullify the
4 agreement. I think, Your Honor, I can stop there in case
5 Your Honor has any questions.

6 THE COURT: No, I don't.

7 Anyone else wish to be heard?

8 (No audible response)

9 THE COURT: All right. Folks, let me tell you that
10 this is very easy for me. I disagree with Mr. Seltz on what
11 the Circuit told me to do. I've lived in this circuit my
12 entire judicial career. I know exactly what they mean when
13 they say what they said. This had nothing to do with Rule 23.
14 It had to do with my acting in contravention of my own
15 confirmation order and plan, which I -- obviously, I didn't
16 intend to do, but they said I did.

17 They also applied the standard -- if we remember, I
18 didn't -- I did the Rule 9019 portion. I didn't certify a
19 class, and it is black letter law that a debtor can't enter
20 into a settlement without my approval. Again, this is all very
21 simple. Given what the Fifth Circuit said, what they directed
22 to do, there is no settlement because I didn't approve it.
23 They didn't have the authority to enter into it, because it
24 contravened my final non-appealable confirmation order and
25 plan. So I do find that the MEC settlement and the non-MEC



1 settlements, they don't exist. They're null and void.

2 Mr. Michael Donovan, I was sensitive to the comments
3 that you raised, and I had looked at the order, and I had
4 gotten away from using the term, effectively, "lawsuits."
5 Because, again, I think you're 100 percent right. I don't
6 think a lawsuit needs to be dismissed simply because there are
7 claims that need to be dismissed.

8 And so what I'm going to do is I'm going to put up
9 a -- I've taken the order that was submitted by Mr. Dan
10 Donovan, and I've changed it. And I would like specifically
11 for you to look at Paragraph 1, because what I've tried to do
12 is to deal only with the plan -- only with the claims that the
13 plan discharged.

14 So give me just a moment and I'll stick that up.
15 Mr. Dan Donovan, I want you to look at it too.

16 MR. D. DONOVAN: Understood.

17 THE COURT: So hold on. Share my screen. That's
18 interesting. All right. That didn't work. Let me try that
19 again. Here we go.

20 So first let me just confirm, Mr. Michael Donovan, I
21 see you looking at the screen, so I assume that you can see it.
22 So, again, wasn't trying to pick on anybody, wasn't trying to
23 single anybody out. What I intended to do and what I think I
24 did was just recognize the effect of the discharge injunction
25 that's in the plan. That just says you can't continue to do --



1 no one can continue to pursue any claims that arose prior to
2 the effective date, and you'll dismiss those claims, if they
3 exist, within 14 days.

4 Doesn't deal with any pending actions, doesn't deal
5 with claims against third parties, doesn't deal with
6 post-effective date claims. It just says you'll clean up -- it
7 just says you'll clean up your lawsuit to make it consistent
8 with the confirmation order.

9 I really do want something that other judges can look
10 at, so that, if there's a criticism, it doesn't come to you
11 folks, it comes to me, which is where it ought to come to. So
12 I just wanted there to be a very clear and unambiguous
13 directive.

14 So, Mr. Michael Donovan, is there something that I've
15 missed or that I missed part of your argument?

16 MR. M. DONOVAN: Well, Your Honor, I have this
17 hesitation. And you didn't miss -- can you hear me,
18 Your Honor?

19 THE COURT: Yes, sir. Yes, sir.

20 MR. M. DONOVAN: I have this hesitation because this
21 is saying of any kind on account of or in connection with or
22 with respect to any claim against any of the debtors and/or
23 reorganized debtors that arose prior to the effective date,
24 continuing in any manner any action or other proceeding.

25 Here's my dilemma with that, Your Honor, just as a



1 practical matter. We, as you know, have RICO claims. We will
2 be pursuing subpoenaed discovery against Chesapeake related to
3 those RICO complaint proceedings. So those would be an action
4 or proceeding for discovery, though we're not looking to
5 recover money from Chesapeake. So I think that --

6 THE COURT: I didn't think --

7 MR. M. DONOVAN: -- in any manner --

8 THE COURT: I didn't think about that. Mr. Donovan,
9 would you -- first of all, do you -- I'm sorry.

10 Mr. Dan Donovan, do you have any issue with the
11 language that I have proposed? Question Number 2: Do you have
12 any objection if I added a sentence that this does not pertain
13 to lawful discovery?

14 MR. D. DONOVAN: Yes. If I can make a couple points,
15 I don't have a problem if we add lawful discovery. I do want
16 to make one point (indiscernible) some language, Judge, just so
17 it's not kind of (indiscernible). Is Mr. Donovan -- the
18 plaintiff, Mr. Donovan, not Mike, will make his claims.
19 There's two points. One is I'm going to have to see those
20 claims before I can determine whether I believe they're
21 pre-effective dates (audio interference) claims --

22 THE COURT: Of course.

23 MR. D. DONOVAN: -- or coming back (audio
24 interference).

25 THE COURT: Of course.



1 MR. D. DONOVAN: Secondly -- and I've raised this
2 with Mike, but we didn't bring the motion yet. I don't believe
3 he can bring claims against Mr. Dell'Osso. He was the CFO.
4 He's now the CEO. He was a released party under the plan that
5 was not objected to by these plaintiffs. That's not in this
6 motion. I just want to make that record so nobody thinks
7 I'm -- but that's for another day.

8 THE COURT: Right.

9 MR. D. DONOVAN: I guess two issues with the sentence
10 here, Judge. I'm just -- "claimants," I'm not sure if that's
11 the right term since these are folks that didn't make claims.
12 So I -- in our proposed order, we use the plaintiffs in those
13 cases. But I know you're trying to go broader. I just raise
14 that as a question for the group.

15 I don't have an objection to the other sentence or --
16 you know, if Mike is entitled to lawful discovery, he's
17 entitled to it. I don't think this would block him. So I
18 don't have a problem with that sentence.

19 THE COURT: How about that? Because I would have
20 used -- if I was doing bankruptcy, I would have said
21 "creditors." "Claimants" was my attempt to be a state court
22 litigator, which I should probably never do.

23 MR. D. DONOVAN: Yeah, I'm (audio interference)
24 persons. And the sentence on discovery is not objectionable
25 for Chesapeake.



1 (Pause)

2 THE COURT: Mr. Michael Donovan, did that solve the
3 issue that you were raising?

4 MR. M. DONOVAN: Yes, but another issue was raised.
5 Is it the Court's intention to bind Mr. Dell'Oso, even though
6 he was the chief executive officer of Access Midstream? I
7 mean, seems like we're going to be back before Your Honor --

8 THE COURT: You may very well be, but that's a
9 separate motion, different issue. What I'm doing today is I am
10 complying with the direction that was given to me by my
11 circuit.

12 MR. M. DONOVAN: Yes, I understand, Your Honor, but I
13 just want it clear on the record that if we go and subpoena and
14 pursue against Domenic Dell'Oso, I'm not going to be hit with
15 a contempt petition where --

16 THE COURT: Not out of this order. You may be the
17 subject of a motion brought by Mr. Dell'Oso, if that's his
18 name, that he has been released and you can't pursue it. I
19 don't know, but that's a separate -- you have a right to be
20 heard. You have a right to prepare for that. You have all
21 sorts of other issues that aren't present today.

22 This order would not result in any sort of issue
23 against Mr. Dell'Oso -- again, if I've got his name right.
24 This is simply dealing with following -- I approved a
25 settlement, the Circuit said I didn't have -- I shouldn't have



1 done it, I was in conflict with my own confirmation order, and
2 I didn't have the requisite jurisdiction. All I'm doing is
3 addressing that issue.

4 MR. M. DONOVAN: Uh-huh. Well, the only -- is there
5 a way to add language that would say, nothing herein shall
6 affect any person's right to seek lawful discovery against
7 debtors and/or reorganized debtors and/or any released parties?

8 THE COURT: I'll go halfway because we're only
9 dealing today with debtors and reorganized debtors. And
10 Mr. Michael Donovan, not trying to make your life more
11 difficult. I don't know anything about your litigation, and I
12 genuinely don't want to, but I'm going to be very careful
13 because I don't want to put my finger on the scale of something
14 that I don't understand, and I hope that you understand that.

15 MR. M. DONOVAN: I do, Your Honor, and I just want it
16 on record and so that you know, the next time we're before you,
17 that we're not doing something amiss by continuing to proceed
18 against Mr. Dell'Osso.

19 THE COURT: So --

20 MR. M. DONOVAN: So that if we're in front of you
21 and -- you're not going to be surprised and I'm not going to
22 get sanctioned.

23 THE COURT: Sure. So can I give you -- so let me
24 be -- back when I was a practitioner, I represented most of the
25 plaintiffs' bar in Houston. So let me give you just a



1 suggestion, and you do whatever you think is right. There is
2 nothing that prohibits you from coming in and filing a motion
3 that says, this is what I propose to do -- because I have the
4 authority to issue advisory opinions under certain limited
5 circumstances. There's nothing that would prohibit you from
6 coming in, filing a motion says, hey, this is what I want to
7 do. You know, everyone say their piece or be quiet.

8 And that way, not only do you get the comfort of you
9 don't get dragged back here, you also have an order that you
10 can then show your judge if he or she is asked to grant relief
11 based upon a bankruptcy case. And I used to do that simply
12 because -- and no disrespect intended to state court judges --
13 they don't understand the implications of all of the sections
14 of the Bankruptcy Code and plan injunctions.

15 And again, I say that that's what I used to do for
16 the folks I represented. But you do what you think is right.
17 If you go pursue Mr. Dell'Oso, this order doesn't affect it.
18 The confirmation order may affect it. The plan may affect it.
19 But this order doesn't affect it. It only deals with the error
20 that I made in approving the settlement and recognizing the
21 effect of the discharge injunction. Okay?

22 MR. M. DONOVAN: I understand.

23 THE COURT: All right. Thank you. Any other
24 comments?

25 (No audible response)



1 THE COURT: All right, then. Thank you, folks. With
2 those modifications, I am going to grant the motion as set
3 forth in the order that we've interlineated on the record here
4 today. That has been signed and it is off to docketing.

5 Gentlemen, thank you for the argument. Please enjoy
6 your day. You're all excused.

7 Those folks who are on -- well, it's 2:30. I have
8 eight minutes. Folks who are on for the 2:30, I'll see you in
9 eight minutes.

10 COUNSEL: Thank you, Judge.

11 COUNSEL: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Proceedings concluded at 2:22 p.m.)

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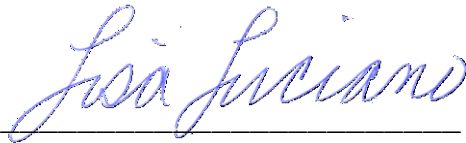
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C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.



LISA LUCIANO, AAERT NO. 327

DATE: September 5, 2023

ACCESS TRANSCRIPTS, LLC

